No. 71-6464

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1971

FRANCIS JAMES MURRAY,
Petitioner,

vs.

CITY OF CINCINNATI,
Respondent.

APPEAL FROM THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT

MEMORANDUM OPPOSING JURISDICTION

MISS ISABEL GUY
Acting City Solicitor

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Municipal Court Prosecutor

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In Propria Persona

PROOF OF SERVICE

I hereby certify that on the 27 day of June, 1972, a copy of this Memorandum was served on Mr. Francis James Murray, In Propria Persona.

John S Moraites

John S. Moraites
Assistant Municipal Court
Prosecutor
Counsel for Respondent

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PROPOSITION OF LAW NUMBER I

A defendant may as a matter of right act on his own behalf in a criminal matter, but in so doing he is restricted to the same rules of evidence and procedure which govern the general practice of law. 2

Authorities cited in support of Proposition of Law Number I:

1. 5 A.L.R. (3d) Para. 7a, p. 1289 2
2. 15 O.J. (2d) Para. 102, page 334 2
3. Article I, Section 10, Ohio Constitution 2
4. *McCann* v. *Maxwell,* 174 O.S. 282 4
5. *McQueen* v. *Maxwell,* 177 O.S. 30 4

STATEMENT OF FACTS

The Petitioner was charged with two counts of disorderly conduct and a charge of telephone harassment. His former wife was the prosecuting witness on the telephone harassment charge and on one of the disorderly conduct charges. The second disorderly conduct charge was filed by a tenant of the ex-wife of the defendant, who is an incapacitated paraplegic.

The cases came on for arraignment in the Criminal Court of the Hamilton County Municipal Court on May 31, 1969, at which time before court began, the arraignment judge advised the Petitioner in detail as to his rights, *including the right to have counsel at no cost to him, if in fact he is an indigent.*

After two continuances, the cases came on for hearing before Judge Thomas D. Heekin of the Hamilton County Municipal Court on June 26, 1969, without a jury, inasmuch as the Petitioner agreed in writing to a jury waiver and agreed to a consolidation of the cases in the presentation of the evidence since only two witnesses for the prosecution were available and the defendant had only himself. At no time during these proceedings did the defendant ever assert himself to be indigent; at no time did he indicate he wanted counsel. After the hearing and sentence, defendant appealed to the First Appellate District Court of Hamilton County, which Honorable Court affirmed the judgment of the Hamilton County Municipal Court. Petitioner then appealed to the Supreme Court of the State of Ohio, which court denied his application for a writ of certiorari. He now seeks to perfect an appeal to the United States Supreme Court. It should be noted that Petitioner attempted to act as his own attorney in the Court of Appeals, but the Court of Appeals almost against his will, insisted that an attorney handle his appeal and finally appointed counsel for this task.

He now again is acting as his own counsel and has made some wild and imaginary charges of error which are not sustained by the facts as reflected in the record.

There is simply no truthful basis in fact to the charges that "the judgments of the lower courts were illegal because of the following: • • •" enumerating some ten fancied abuses.

At no time was the Petitioner coerced to do anything against his will. He now alleges himself to be poor but at no time does he allege his illiteracy. Indeed, and in fact, he is an educator by profession.

He knowingly signed a waiver of trial by jury and knowingly went to trial. The prosecution and courts throughout did everything possible to safeguard his legal rights. He offers nothing new now in his attempt to have the Supreme Court of Ohio accept his appeal.

PROPOSITION OF LAW NUMBER I

A defendant may as a matter of right act on his own behalf in a criminal matter, but in so doing he is restricted to the same rules of evidence and procedure which govern the general practice of law. Authorities in support of Proposition of Law Number I, 5 A.L.R. (3d), Para. 7a p. 1289; 15 O.J. (2d), para. 102, page 334; Article I, Section 10 of the Ohio Constitution. *McCann* v. *Maxwell*, 174 O.S. 282; *McQueen* v. *Maxwell*, 177 O.S. 30.

ARGUMENT

Article I, Section 10 of the Ohio Constitution establishes the right of an individual to be represented by counsel. This right is also guaranteed under the Sixth Amendment of the United States Constitution and is applied to the states under the Fourteenth Amendment of the United

States Constitution. This right along with any other right may be waived if such a waiver is obtained under the proper procedures.

This right of waiver is as well established in the Federal Courts as it is in the courts in the State of Ohio.

> "It is well established that it is permissible and within the 'due process of law' for a person to be accused of a non-capital crime to waive his rights, if any, to the assistance of counsel for his defense, irrespective of whether or not he pleads guilty."

> "While it is undoubtedly the right of a party accused of crime to be present with his counsel at every stage of his trial, the right to the presence of counsel is in the nature of a personal privilege, which may be waived. It is no part of the business of courts to compel the attendance or to enforce the vigilance of counsel." 15 O.J. (2d) Para. 102, page 334.

The courts in Ohio have continually held that an individual must intelligently waive his right to counsel, that he must be apprised of his right to counsel, and that even if this right has been waived the court will not recognize such a waiver if there are an abundance of complicated procedural steps or if the penalty involved is severe. In this particular trial none of these criteria were present. This was a municipal court case in which the charges were disorderly conduct and telephone harassment. The one carrying a maximum penalty of $100 and/or thirty days, and the other a maximum penalty of $500 and/or six months. The trial judge took the special precaution to inform Petitioner of his right to representation by counsel and this time the judge was informed that the defendant desired to represent himself. There is no evidence or claim ever asserted that the Petitioner was in fact an indigent. The Petitioner is or at least was a pro-

fessor at a local college and therefore must as a matter of due course possess some type of higher education.

The procedures in the trial level of the municipal court are uncomplicated and were followed in the prescribed manner.

At the Appellate level the Petitioner again attempted to represent himself and in fact did so in several preliminary matters before the court. However, the court sua sponte took it upon itself to appoint a member of the bar to represent Petitioner before that court. And although represented by competent counsel before the First District Court of Appeals, the Petitioner interrupted the proceedings and requested that he be heard.

This court has held:

> "It is the general rule that in the absence of unusual circumstances an accused who is mentally competent and sui juris has the right to conduct his own defense without aid of counsel." *McCann* v. *Maxwell*, 174 O.S. 282.

Again this court in *McQueen* v. *Maxwell*, 177 O.S. 30, held that:

> "Even though a serious charge had been lodged against the Defendant, he had signed a written waiver of counsel in the Common Pleas Court, and there was no evidence to refute that he knowingly and intelligently waived his right to counsel."

Although in this instance we are not involved in the Common Pleas Court nor are we concerned with a serious offense, we are presented with a case in which a man knowingly and intelligently has waived his right to counsel.

Perhaps our position can be summed up in a statement from the Court of Appeals from California in *Jessie Lom-*

bardi v. *Citizen's National Trust and State Bank of Los Angeles,* which stated:

> "A litigant has the right to act as his own attorney, but if he does so, he should be restricted to the same rules of evidence and procedure of those qualified to practice law; otherwise ignorance is unjustifiably rewarded."

CONCLUSION

There exists here no constitutional or great general public issue, but only a conviction of a Petitioner who acted on his own behalf and now regrets his consequences.

Respectfully submitted,

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Assistant Municipal Court Prosecutor
Counsel for Plaintiff-Appellee